

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
3:95-cr-119-MOC

UNITED STATES OF AMERICA

Vs.

GERALD DAMONE HOPPER,

Defendant.

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ORDER

THIS MATTER is before the Court on Defendant's Pro Se Motion for Recusal and Pro Se Motion to Quash Warrant for Arrest. (Doc. Nos. 271, 273). The Government has filed a response in opposition. (Doc. No. 274).

Defendant is currently on supervised release after serving his sentence for numerous convictions in this Court. U.S. Magistrate Judge Keesler signed a Petition for Warrant for Offender under Supervision on April 3, 2023. (Doc. No. 265). The Petition alleges two violations: a new law violation committed by Defendant and that Defendant left the judicial district without permission.

On April 21, 2023, an initial appearance on the Petition was held before U.S. Magistrate Judge Susan C. Rodriguez. On April 26, 2023, a preliminary hearing and a detention hearing were held before Judge Rodriguez. The Court found probable cause as to the violations and detained Defendant pending further proceedings. (Doc. No. 270).

On May 18, 2023, Defendant filed the pending Motion for Recusal. (Doc. No. 271). On May 25, 2023, Defendant filed the pending Pro Se Motion to Quash Warrant for Arrest. (Doc.

No. 273). In the motions, Defendant argues that Judge Keesler should have recused himself because he was an Assistant United States Attorney when Defendant was originally charged, and Judge Keesler prosecuted the case against Defendant on his underlying convictions. He also asserts that because Judge Keesler prosecuted Defendant's case, the motion for arrest warrant on the supervised release violations should be quashed.

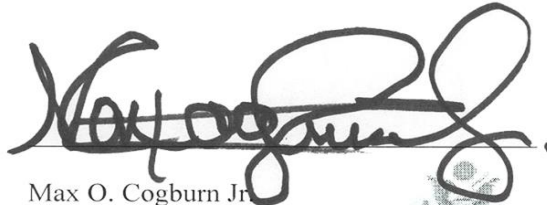
For the reasons stated in the Government's response, Defendant's motions are denied. First, the fact that Judge Keesler prosecuted the case against Defendant does not require recusal. Judge Keesler took the bench as a federal magistrate judge in 2004, so any action in Defendant's case since then would have been handled by other members of the U.S. Attorney's Office. Judge Keesler did not handle any of the hearings, motions, or other filings related to Defendant's first supervised release revocation. The only aspect of this second supervised release revocation that Judge Keesler has participated in was the signing of the Petition. Merely reviewing allegations of violations of Defendant's conditions of supervised release and determining if there was probable cause does not demonstrate partiality in Defendant's matter.

In any event, any problem created by Judge Keesler's signing of the Petition has been cured. Here, Judge Rodriguez handled Defendant's initial appearance, preliminary hearing, and detention hearing. At the preliminary hearing, Judge Rodriguez independently found that probable cause existed for both alleged violations in the Petition. Thus, if Defendant suffered any prejudice, it was cured by Judge Rodriguez's finding of probable cause.

ORDER

IT IS, THEREFORE, ORDERED that defendant's Pro Se Motion for Recusal and Pro Se Motion to Quash Warrant for Arrest, (Doc. Nos. 271, 273) are **DENIED**.

Signed: June 9, 2023



Max O. Cogburn Jr.
United States District Judge